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July 5, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Ex Parte Presentation. Notice of Proposed Rulemaking
(Implementation of the Local Competition Provisions in
the Telecommunications Act of 1996), CC Docket No. 96-98
(Rel. April 19, 1996).

Dear Mr. Caton:

Western Wireless Corporation ("Western"), by its attorneys, pursuant to Section 1.1206(a)(1) of the Commission's rules, 47 C.F.R. § 1.1206(a)(1), submits this ex parte letter (two copies enclosed) in the above captioned matter. As set forth in more detail below, Western urges the Commission to establish a national presumptive mutual compensation rate ceiling of .75 cents a minute for tandem interconnection and .50 cents a minute for end office interconnection for Local Exchange Carrier ("LEC") -to - Commercial Mobile Radio Service ("CMRS") interconnection.

Support for this presumptive rate ceiling is found in existing interconnection agreements between LECs and other providers of wireline local service. Unlike CMRS providers, competitive local wireline service providers have obtained the support of several state commissions for interim bill and keep arrangements. The threat of bill and keep has paid significant dividends for competitive wireline service providers by leveling the playing field, which, in turn, has resulted in purportedly cost-based interconnection arrangements between LECs and competitive wireline local service providers. In contrast, CMRS providers continue to pay excessive interconnection rates and, as explained below, without the Commission's intervention, CMRS providers will likely continue to be subject to unreasonably discriminatory interconnection rates. It is therefore imperative that the

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Commission exercise its lawful authority over CMRS providers and establish a national presumptive mutual compensation rate ceiling of .75 cents a minute for tandem interconnection and .50 cents a minute for end office interconnection.

Western, through its subsidiaries, owns and operates cellular systems in 15 western states, with a focus on Rural Service Areas ("RSAs") and small Metropolitan Statistical Areas ("MSAs"). Western currently serves over 70 cellular markets with an aggregate population of nearly 6 million persons. Western also participated in the "A" and "B" block broadband PCS auction that was concluded in December 1995, and was the high bidder for and purchased A block licenses for six Major Trading Areas ("MTAs"), namely Honolulu, Salt Lake City, Portland, Des Moines/Quad Cities, El Paso/Albuquerque and Oklahoma City, with an aggregate population of approximately 15.1 million persons. Western recently purchased the B block PCS license for the Denver MTA from the auction winner. Western is also the 49.9 percent limited partner in Cook Inlet Western Wireless PV/SS PCS, L.P., which was the high bidder for 13 BTAs in the recently concluded C block PCS auction and has filed to participate in the C block reauction. In February 1996, Western's PCS system in the Honolulu MTA became the first auction-awarded PCS system to commence commercial operations in the United States, and in June 1996 its PCS system in the Salt Lake City MTA became the second auction-awarded PCS system to commence commercial operations.

In addition to its experience as a provider of traditional wireless services to the mobile subscriber, Western has taken several steps to position itself as a leader in the provision of wireless local loop and universal services. John Stanton, Western's chairman and chief executive officer, has assembled a task force within Western, headed by the former chief financial officer of McCaw Cellular, to explore universal service business opportunities, and is actively seeking to hire other experts in the field to expand the group. Western's director of regulatory affairs serves on the Colorado High Cost Fund Task Force for Universal Service. Western is currently providing fixed wireless universal service in portions of the state of Nevada, and was the sole wireless carrier responding to a recent request by the state of Hawaii for proposals to provide universal service in the Ka'u region of the Island of Hawaii. Thus, Western has a compelling interest in the Commission's development of procompetitive interconnection policies.

In its capacity as a provider of mobile services and, more recently, in its efforts to provide wireless fixed services in competition with the incumbent LECs, Western has encountered a consistent pattern of interconnection rates that are based on

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access charges rather than incremental costs and other discriminatory practices. Such LEC behavior in no way satisfies the requirements of Sections 251 and 252 of the Telecommunications Act of 1996 (the "Telecom Act") or Section 332(c) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

Under the statutory mandate of both Section 332 of the Budget Act and Sections 251 and 252 of the Telecom Act, incumbent LECs are required to enter into just, reasonable and nondiscriminatory reciprocal compensation arrangements for the transport and termination of CMRS traffic. Sections 251 and 252 require that such services be priced at the carrier's incremental costs. Section 251 of the Telecom Act directs the Commission to promulgate implementing regulations, and Congress emphasized the urgency of its command by demanding them within six months. Several of the parties submitting comments and reply comments in this rulemaking have demonstrated that in defining just, reasonable and nondiscriminatory interconnection rates, the Commission has authority to establish national pricing standards in accordance with the requirements of Section 252.^{1/}

Western confirms the importance of the Commission's immediate adoption of national pricing standards. Today, Western pays excessive rates for interconnection of its wireless operations to the LECs' networks, and, to date, it has been unable to renegotiate those agreements to establish reasonable, cost-based rates as required by the Telecom Act. Western advocates that the Commission implement a set of proxy-based rate ceilings in order to jump start the implementation of nondiscriminatory, cost-based interconnection charges and reciprocal compensation, as mandated by the Telecom and Budget Acts.

Western's wireless operations fall within the areas served by a handful of major LECs and numerous independent LECs ("ILECs"). Contrary to law and FCC policy, Western is treated as a customer of the LECs with respect to interconnection, not as a co-carrier, and typically pays per minute interconnection rates based upon the LECs' intrastate access charges. When directly interconnecting to LECs, Western typically pays tandem office interconnection rates of up to 8.1 cents a minute, plus any applicable toll charge. The excessiveness of the rates charged by the major LECs in many instances pale when compared with those charged by the ILECs. The rates charged by ILECs for terminating traffic that originates on a wireless carrier's network, which are based upon the ILEC's intrastate access charges, range from 5 cents to 17 cents or more

^{1/} See, e.g., Reply Comments of Winstar Communications, Inc. at 6-7; Reply Comments of Vanguard Cellular Systems, Inc. at 3-5.

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per minute, plus any applicable toll. This issue is particularly acute for Western, where there are numerous ILECs operating within a state. Wireless carriers, such as Western, typically interconnect with the larger LECs, which interconnect and route the traffic to the ILECs. The ILECs then charge intrastate access rates for terminating wireless traffic. Under this arrangement, there is virtually no incentive for the larger LEC to negotiate for lower ILEC rates. The serious adverse effect of such high rates on the very viability of a wireless carrier in the increasingly competitive market cannot be overstated.

Based on information provided to Western, these rates include markups for joint and common costs and overhead. Western maintains that incumbent LECs should recover their overhead and joint and common costs in their retail end user rates, as they do today. Including such rate-based items in interconnection charges cannot be reconciled with the pricing standard set forth in Section 252(d)(1) of the Telecom Act that the rates for interconnection or a network element be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element," which is properly interpreted as the incumbent LEC's long run incremental cost.

Western has had meetings with each of the major LECs in its wireless service area to attempt to bring its interconnection arrangements into compliance with the Telecom Act. To date, Western has been unable to reach any agreement with incumbent LECs on cost-based interconnection rates. LECs also have refused to incorporate reciprocal compensation into Western's existing interconnection arrangements, arguing that the added features available to Western through these interconnection arrangements result in these arrangements being more akin to customer contracts, which, according to these LECs, are not eligible for reciprocal compensation. These LECs contend that if Western wants reciprocal compensation, it must change the way it interconnects and establish a "bare bones" interconnection arrangement without features such as wide area calling, reverse billing, and calling party pays. Even if Western were to agree to a "bare bones" interconnection arrangement, the LECs have put forth blatantly unreasonable and discriminatory reciprocal compensation proposals. For example, one LEC proposed that Western continue to pay the LEC's existing excessive interconnection rates and that it would compensate Western only \$0.0039 a minute for its traffic that terminates on Western's network. As it now stands, Western's choices are: (1) to continue under its existing interconnection arrangement, which does not provide for reciprocal compensation; or (2) to change the way it interconnects, forego the features that it currently uses and pays for today, continue to pay excessive rates for terminating

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traffic on the LECs' network, and receive a "token" per minute compensation for terminating the LECs' traffic on Western's network.

Western has been similarly unsuccessful in attempting to obtain the intervention of the relevant state public utility commissions, notwithstanding the mandate of the Telecom Act and the pendency of this rulemaking on interconnection before the Commission. With an eye towards federal relief, Western has not formally petitioned state commissions in its service areas to establish cost-based interconnection rates. Western has, however, informally contacted several state commissions to ascertain whether they would be willing to expand any existing interconnection proceedings to include LEC - to - CMRS interconnection, or whether they would institute a proceeding to address these issues. In all cases, the state commissions have expressed an unwillingness to address CMRS interconnection issues. For example, the California Public Utilities Commission ("CPUC") recently refused to extend bill and keep treatment to cellular carriers. Western had filed an application to provide local exchange service in California using its own wireless facilities and reselling wireline local exchange service. Addressing the application of Western and other cellular carriers, the CPUC stated that unless cellular carriers agreed to be subject to the requirements applicable to the provision of wireline facilities-based local exchange service, it would not extend bill and keep treatment to such carriers.

If, on the other hand, the cellular providers intend to offer a new form of service using wireline technology, then they must clarify this distinction in their supplemental filings. Upon receipt of this supplemental filing from the cellular petitioners, we are prepared to promptly review the new information and, if they meet our CLC eligibility requirements, we will reconsider approving their petitions, extending to them the opportunity to enter into a separate interconnection agreement with the LECs and to receive bill and keep treatment for their separate service.^{2/}

^{2/} CPUC Decision No. 95-12-057 (December 20, 1995) at 13-14. Because Western did not intend to provide wireline local exchange service, it informed the CPUC that it would provide wireline local exchange service on a resale basis only. The CPUC subsequently granted Western authority to resell local exchange service, but did
(continued...)

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Western's experience is consistent with the view of the Connecticut Department of Public Utility Control, which has adopted a hands-off position with respect to LEC - to - CMRS interconnection matters: "In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not extend the benefit of mutual compensation to such carriers."^{3/} To Western's knowledge, state commissions within its service areas have not addressed LEC - to - CMRS interconnection in rulemaking proceedings. Logic would also compel this conclusion: absent FCC intervention, the state commissions cannot be expected to accord the same evenhandedness to the wireless carriers, which are not subject to state jurisdiction, that it gives to wireline carriers, which are subject to state jurisdiction and are very much a fixture in their areas of operations.

In view of these very real difficulties, Western strongly urges the Commission to exercise its lawful authority over LEC - to - CMRS interconnection arrangements and adopt proxy-based cost ceilings that will serve as the only effective mechanism to constrain the pricing behavior of incumbent LECs pending the development of accurate cost information against which state commissions may judge the justness and reasonableness of proposed rates in arbitration proceedings. As has been advocated by some of the commenting parties in this proceeding,^{4/} Western asserts that the most accurate available data as to the appropriate levels for these ceilings should be the rates negotiated, or mandated by state commissions, between competitive wireline local exchange providers and incumbent LECs.

Although it does not have access to all of the relevant rates charged by LECS to other wireline carriers in their interconnection agreements, the limited data that Western does have with respect to recently negotiated agreements between LECs and competitive LECs is set forth in Attachment A. It would be expected that these rates would be higher than the true incremental costs, because the competitive LEC would typically be in less than an equal bargaining position with the incumbent LEC. However, even this data

^{2/} (...continued)

not extend bill and keep treatment to its interconnection of its wireless facilities to the facilities of the LECs.

^{3/} DPUC Investigation into Wireless Mutual Compensation Plans, State of Connecticut Department of Public Utility Control, Docket No. 95-04-04 (September 22, 1995).

^{4/} See, e.g., Comments of Winstar Communications, Inc. at 11-12.

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establishes a range of between .29 cents to .98 cents per minute for interconnection at the tandem and between .27 and .74 for interconnection at the end office, which is a small fraction of the rates that continue to be charged by each LEC for interconnection with Western. On this basis, Western would propose that the Commission adopt a rebuttable mutual compensation presumption that interconnection rates of .75 cents a minute (tandem switching) and .50 cents a minute (end office switching) are reasonable. However, should the Commission determine that the range of rates charged by LECs to one another in their interconnection agreements dictates lower caps, then Western would urge the Commission to adopt those numbers.^{5/}

In order to rebut the presumption that these maximum rates cannot be exceeded, the LEC would be required to submit cost data to the state commission, which would determine "the just and reasonable rate for the interconnection for facilities and equipment for purposes of subsection (c)(2) of section 251."^{6/} Therefore, should the case arise where the proxy-based rate ceiling would fail to compensate a given LEC for its true incremental costs, it would have a forum before the state commission to establish this fact and be awarded a higher rate commensurate with its costs.

The need for FCC action is now. Unlike negotiations between carriers with equal bargaining strength or negotiations between entities with an equal desire to reach an agreement, negotiations with LECs have been uniquely one-sided: LECs dictate the rates, terms, and conditions of interconnection; wireless carriers must accept these dictates or forego interconnection. Simply put, there

^{5/} See, e.g., Reply Comments of Comcast Cellular Communications, Inc. in this proceeding at 16, which indicate that "it is well-established that the incremental cost of LEC call termination is 0.2 cents per minute," citing a compressive public engineering study of incremental cost of interconnection that was done by the Incremental Cost Task Force with members from GTE, Pacific Bell, the California Public Utilities Commission, and the RAND Corporation and an independent engineering study prepared by New England Telephone for the Massachusetts Public Utility Commission that reached the same conclusion. *Id.* at 16 n.32. Should the Commission find on the basis of its examination of the LEC-to-LEC interconnection agreements that bill-and-keep arrangements predominate, then Western would advocate that such an arrangement be made available to CMRS carriers interconnecting with LECs as well.

^{6/} Section 252(d)(1) of the Telecom Act.

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is no more negotiation for true cost-based rates then there is between the LEC and any other customer. When challenged, the LECs claim that their rates are cost-based, even though their regulatory filings indicate that their interconnection rates include a subsidy for local exchange service and other historic costs and overhead items, or claim that, notwithstanding the Telecom Act's specific requirements of cost-based rates for termination of traffic, such requirements do not apply to LEC - to - CMRS interconnection. Furthermore, as stated above, certain LECs take the position that reciprocal compensation is not available for interconnection with a CMRS carrier--in obvious disregard of the fundamental tenets and express requirements of the Telecom Act. In some cases, the "price" for reciprocal compensation would be for Western to forego all of the special functions and features that Western currently purchases from the LEC (also at prices that have no roots in the LEC's actual costs) and to which Western and its subscribers have become accustomed--in other words, knowing or unknowing blackmail.

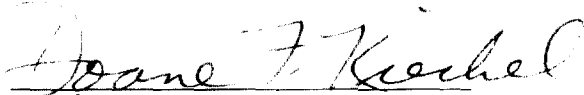
By implementing a proxy that establishes a rebuttable mutual compensation presumption that interconnection rates of .75 a minute (tandem switching) and .50 cents a minute (end office switching) are reasonable (or such other rates that the Commission may determine based on more complete data of arguably more reliable LEC - to - LEC interconnection agreements), the Commission will establish a level playing field for interconnection and properly put the onus on LECs (who alone have access to the relevant data) to show that their costs exceed the presumed rates. Such a national pricing policy may be the only means of establishing true cost-based LEC - to - CMRS interconnection in conformance with the Telecom Act.^{7/} National guidelines would also add consistency to state arbitration processes, helping CMRS carriers' negotiating position and speeding their entry into new markets. CMRS providers have endured years of discriminatory and confiscatory rates that are plainly prohibited by the express provisions of the Telecom Act. Every day that this industry-wide abuse is allowed to

^{7/} In order to achieve true cost-based rates in all instances, the Commission must require an industry-wide accounting of the incremental costs faced by each LEC. Otherwise, in those instances where the presumptive price caps exceeded the LEC's incremental costs, there would be no mechanism in place to cause the interconnection rates to be reduced to the proper levels. It is safe to assume that the LECs would attempt to rebut the presumptive caps only when their incremental costs were higher, not lower. Accordingly, CMRS providers must likewise be able to rebut the presumption and demand a showing by the LECs that the presumed rates actually reflect the costs of providing interconnection service.

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continue threatens the procompetitive underpinnings of the Telecom Act to the ultimate detriment of the public at large.

Respectfully submitted,



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June 21, 1996 Ex Parte Meeting Attendees
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Zenji Nakazawa
David Nall
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Jeffrey Steinberg

California Public Utilities Commission
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Exhibit A

Survey of LEC/CLEC Interconnection Agreements

(The following information has been obtained through trade press articles or other unofficial sources and may not be accurate.)

<u>Carriers/States</u> Recently-Negotiated	<u>Tandem Switching</u>	<u>End Office</u> <u>Switching</u>
1. Ameritech and CLECs	.75 cents/minute	.50 cents/minute
2. Pacific Bell and MFS	.75 cents/minute	
3. Bell Atlantic and CLECs	.50 cents/minute	.30 cents/minute
4. NYT and CLECs	.98 cents minute (day) .73 cents/minute (eve) .29 cents/minute (nite)	.74 cents/minute (day) .34 cents/minute (eve) .27 cents/minute (nite)
5. Ameritech and SBC Mobile	.64 cents/minute plus milage, if any (reduced to .50 cents/minute in 1996)	
6. Ameritech (5 states) and MFS	.8 cents/min.	.8 cents/min.
7. NYNEX and MFS (NY and MA)	.8 cents/min.	.8 cents/min.